

1986

State of Utah v. Charles Gates and Delores Gates : Brief of Respondent

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca1

 Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Mark H. Gould; James R. Hasenyager; Marquardt, Hasenyager and Custen.

David L. Wilkinson; Attorney General; Sandra L. Sjogren; Assistant Attorney General; Attorneys for Respondent.

Recommended Citation

Brief of Respondent, *Utah v. Gates*, No. 860270 (Utah Court of Appeals, 1986).
https://digitalcommons.law.byu.edu/byu_ca1/157

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

BRIEF

UTAH
DOCUMENT
K F U
50

.A10

DOCKET NO. 860270-CA

IN THE UTAH COURT OF APPEALS

STATE OF UTAH, :
Plaintiff-Respondent, : Case No. 860270-CA
vs. :
CHARLES GATES and DELORES GATES, : Priority No. 2
Defendants-Appellants. :

BRIEF OF RESPONDENT

APPEAL FROM CONVICTION OF BURGLARY, A SECOND
DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN.
§ 76-6-202 (1982), IN THE SEVENTH JUDICIAL
DISTRICT COURT, IN AND FOR UTAH COUNTY,
STATE OF UTAH, THE HONORABLE RICHARD C.
DAVIDSON, PRESIDING.

DAVID L. WILKINSON
Attorney General
SANDRA L. SJOGREN
Assistant Attorney General
236 State Capitol
Salt Lake City, Utah 84114
Attorneys for Respondent

MARK H. GOULD
JAMES R. HASENYAGER
MARQUARDT, HASENYAGER AND CUSTEN
2661 Washington Blvd., Suite 202
Ogden, Utah 84401

RECEIVED
SEP 4 1987

COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

STATE OF UTAH, :
Plaintiff-Respondent, : Case No. 860270-CA
vs. :
CHARLES GATES and DELORES GATES, : Priority No. 2
Defendants-Appellants. :

BRIEF OF RESPONDENT

APPEAL FROM CONVICTION OF BURGLARY, A SECOND
DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN.
§ 76-6-202 (1982), IN THE SEVENTH JUDICIAL
DISTRICT COURT, IN AND FOR UTAH COUNTY,
STATE OF UTAH, THE HONORABLE RICHARD C.
DAVIDSON, PRESIDING.

DAVID L. WILKINSON
Attorney General
SANDRA L. SJOGREN
Assistant Attorney General
236 State Capitol
Salt Lake City, Utah 84114
Attorneys for Respondent

MARK H. GOULD
JAMES R. HASENYAGER
MARQUARDT, HASENYAGER AND CUSTEN
2661 Washington Blvd., Suite 202
Ogden, Utah 84401

TABLE_OF_CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
JURISDICTION AND NATURE OF PROCEEDINGS.....	1
STATEMENT OF ISSUES PRESENTED ON APPEAL.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS.....	2
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS.....	2
SUMMARY OF ARGUMENT.....	5
ARGUMENT.....	6
POINT I THE TRIAL COURT PROPERLY ADMITTED DEFENDANTS' VERBAL AND WRITTEN CONFESSIONS INTO EVIDENCE.....	6
POINT II THE EVIDENCE WAS SUFFICIENT TO PROVE BEYOND A REASONABLE DOUBT THAT DEFENDANTS WERE GUILTY OF BURGLARY.....	10
CONCLUSION.....	12

TABLE OF AUTHORITIES

CASES CITED

<u>Dunaway v. New York</u> , 442 U.S. 200 (1979)	9, 10
<u>Payton v. New York</u> , 445 U.S. 573 (1980)	10, 11
<u>Phillips v. State</u> , 492 N.E. 2d 10 (Ind. 1986)	9, 10
<u>State v. Ballengerger</u> , 652 P.2d 927 (Utah 1982)	8
<u>State v. Hinton</u> , 680 P.2d 749 (Utah 1984)	8
<u>State v. Lesley</u> , 672 P.2d 79 (Utah 1983)	7
<u>State v. Medina</u> , No. 20629 (Utah, April 23, 1987)	7
<u>State v. Ransom</u> , 309 N.W.2d 156 (Iowa App. 1981)	9
<u>State v. Underwood</u> , 58 Utah Adv. Rep. 7 (filed May 21, 1987)	12

STATUTES

Utah Code Ann. § 76-6-202 (1982)	2
Utah Code Ann. § 78-2a-3(2)(e) (1987)	1

IN THE UTAH COURT OF APPEALS

STATE OF UTAH, :
Plaintiff-Respondent, : Case No. 860270-CA
vs. :
CHARLES GATES and DELORES GATES, : Priority No. 2
Defendants-Appellants. :

BRIEF OF RESPONDENT

JURISDICTION

This appeal is from a conviction of burglary, a second degree felony, after a trial in the Seventh District Court. This court has jurisdiction to hear the appeal under Utah Code. Ann. § 78-2a-3(2)(e) (1987).

STATEMENT OF ISSUES PRESENTED ON APPEAL

1. Whether the trial court erred in admitting into evidence defendants' written confessions and testimony of verbal statements made to deputies.
2. Whether the suppression hearing judge erred in denying defendants' motion to suppress evidence.
3. Whether the evidence at trial was sufficient to convict defendants of burglary.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. U.S. Const. amend. IV.

STATEMENT OF THE CASE

Defendants, Charles and Delores Gates, were charged with burglary, a second degree felony, in violation of Utah Code Ann. § 76-6-202 (1982).

A jury convicted defendants of burglary on September 4, 1986, in the Seventh Judicial District Court, in and for Uintah county, State of Utah, the Honorable Richard C. Davidson, presiding. Judge Davidson sentenced defendants on October 7, 1986, to pay restitution and serve a period of probation.

STATEMENT OF FACTS

On or about December 16, 1985, the victim Gladys Williams, now deceased, was taken to the hospital from her Whiterocks Road home in Uintah County. Her nephew, Jeff Henderson, took charge of the house, going periodically to feed the cats, pay her bills, and look over the house in general (T. 25).¹

On January 3, 1986, Mr. Henderson checked the house and left it in order. He returned on January 6, and found the back

¹ S.H. = Suppression Hearing Transcript; T. = Trial Transcript.

door's lock and hasp pried from the casing and hanging from the door. Inside, Mr. Henderson found mail dispersed on the kitchen floor, burnt matches laying around, and boxes and drawers laying in the bedroom. A metal file box showed signs of prying (T. 25-27). He immediately called the Sheriff's Office to report his findings. Deputies Gerald Cook and Kris Porritt responded to the call (T. 27).

On March 29, 1986, defendant Charles Gates called the Central Dispatch Center at approximately 1:00 a.m. (S.H. 23; T. 49-50). Defendant requested to speak with Deputy Kris Porritt and when told that he was unavailable, defendant told the dispatcher to send any deputy to his home, that he and his wife were having trouble and that he had burglarized the home of an elderly lady (T. 50-52). Deputy Porritt responded to defendants' home after the dispatcher told him there was a family disturbance there (S.H. 45).

Deputy Porritt testified at trial that he arrived at defendants' home on Whiterocks Road at approximately 1:15 a.m. with Deputy Wayne Hollebeke. They found Charles Gates at the back door and asked him about the call. Gates answered: "Come on in and I'll tell you the story inside the house" (S.H. 32, 46; T. 57, 96-97).

Inside the house, defendant Delores Gates continued fighting with Charles Gates while the latter told the deputies that he wanted to confess to a residential burglary the couple had committed on Whiterocks Road (S.H. 39; Tr. 58-59). Defendants explained that he wanted to confess so that they would

be jailed and Delores would be prevented from leaving for Kansas as she had threatened (S.H. 39; T. 98). Delores Gates said she wanted to leave the home because she feared for herself and her children (S.H. 47, 49).

Due to the constant fighting between defendants, who had been drinking, and in order to separate them, the deputies decided to take defendants to the Sheriff's Office (S.H. 33-34, 48; T. 59, 62). Deputy Porritt advised defendants of their rights by reading off a card as follows: "You are not under arrest, but I do want to advise you of your Miranda rights," followed by a Miranda warning (T. 60-62). Next, Deputy Porritt asked defendants if they would be willing to go to the Sheriff's Office in Vernal to get help from social services and give written and verbal statements. Defendants agreed (S.H. 37; T. 62-63, 88-89). Originally, Deputy Porritt offered to allow defendants to drive their own vehicle but decided not to allow it because defendants had been drinking alcohol (S.H. 43; T. 62).

Deputy Porritt drove with Charles Gates while Deputy Hollebeke took Delores Gates and her children. Neither defendant was handcuffed (T. 64). In the car, Charles Gates confessed through a guessing game, that he and his wife broke into Gladys Williams' house and explained the details of how they did so (T. 64-66). In addition, defendant said it was rumored that there was cash in the house and they were after it (T. 66-67). He expressed that he was scared because Delores could not keep a match lighted while they were inside the house because she shook so hard (T. 67).

Defendants arrived at the Sheriff's Office at approximately 2:15 a.m. (T. 80). Once there, they were taken to separate rooms. Delores Gates talked with Deputy Hollebeke about what threats Charles had made to her and about the felonies Charles mentioned (S.H. 51). The children left with a social worker and Delores calmed herself (S.H. 52). She then gave a written confession to Hollebeke (S.H. 51, T. 94). Charles Gates verbally confessed again to Deputy Porritt who interrupted and asked defendant if he was aware that he could stop any time and have an attorney present. Defendant said he was aware and willing to continue, and he did so (T. 70).

After Charles Gates told the same story he had told in the car, Deputy Porritt read him the Miranda warning from a printed statement form and had defendant write down the statements he made previously (T. 73). Defendants were arrested at approximately 5:00 a.m. (T. 96). Two days later, Charles Gates gave a similar statement to Deputy Cook and a social worker, while he was in jail. (T. 106).

Before the trial, defendants moved to suppress the verbal and written statements they had given (See Reporter's Transcript of Suppression Hearing.) At the suppression hearing and again at trial, defendants denied having committed any crime and testified that their prior statements were coerced by the deputies (T. 113-137). At the close of the suppression hearing, the court denied the motion to suppress (S.H. 58-61).

SUMMARY_OF_ARGUMENT

1. Defendants are precluded from raising the suppression issue on appeal because not only did they fail to object to the admission of evidence at trial, but they assured the court that no objection existed.

2. Even if this court reviews defendants' claim, defendants incriminating verbal and written statements are admissible because either they were not arrested at their home or if they were arrested, the arrest was legal.

The testimony indicates that defendants accompanied the deputies voluntarily and there was no evidence of force or intimidation. In addition, defendant Charles Gates requested the deputies' presence in his home, he invited them in, and never asked them to leave. The entry was consensual and therefore, even if there was an arrest the arrest was legal.

3. The evidence includes defendants' confessions of the burglary and is therefore sufficient to convict them. Even if defendants' confessions are inadmissible, and viewing the evidence in the light most favorable to the verdict, there is sufficient circumstantial evidence to convict defendants.

POINT_I

THE TRIAL COURT PROPERLY ADMITTED DEFENDANTS'
VERBAL AND WRITTEN CONFESSIONS INTO EVIDENCE.

Before trial, defendants moved to suppress their verbal and written confessions on the grounds that they were obtained after an illegal arrest. The court denied defendants' motion after a suppression hearing. At trial, the State introduced the evidence and a jury found defendants guilty as charged.

Defendants contend that the court erred in first denying defendants' motion to suppress at the hearing and then admitting the evidence during trial. However, defendants made no objection to the testimony of the deputies at trial, nor did they object to the admission of defendants' written statements as Exhibits 3 and 4. On the contrary, when the court specifically asked defense counsel if he objected to the admission of Exhibits 3 and 4, he responded that he had no objection (T. 74, 94).

In State v. Lesley, 672 P.2d 79, 82 (Utah 1983), the Utah Supreme Court held that "a specific objection is required even where a pre-trial motion to suppress has been made."² Admittedly, some of the rationale behind Lesley does not exist in the instant case. The suppression hearing here was recorded and the trial judge was the same judge who heard the motion. Nevertheless, the trial judge was entitled to "an opportunity to avoid error in the trial" based on "a more complete view of the grounds for excluding or admitting certain evidence." The judge was entitled to assume that defendant had abandoned their objection when it was not renewed at trial, especially where defense counsel affirmatively assured the trial court that he had no objection to the admission of Exhibits 3 and 4. The fact that a counsel's strategic decision may appear incorrect after the fact provides no basis for the court's review of the issue. State v. Medina, No. 20629 (Utah, April 23, 1987). Thus, trial

² Although Lesley was based on Rule 4 of the former Rules of Evidence, the objection requirements were adopted in Rule 103, Utah R. Evid. (1987).

counsel's assertion that he had no objection to the introduction of the evidence precludes defendants from raising the issue on appeal.

If this court decides to review the issue, the evidence offered at trial was admissible nevertheless, because either defendants were not arrested until after they gave the statements, or, if arrested, the arrest was legal. Defendants allege that they were arrested at home, that the arrest was warrantless and therefore illegal, and that subsequently, the statements they made are inadmissible in court.

In Utah, the general rule is that "he who moves to suppress evidence must support his motion with proof." State v. Hinton, 680 P.2d 749 (Utah 1984). In order to prevail at the suppression hearing, defendants must have shown that they were arrested in their home and that their arrest was illegal.

In support of their motion to suppress defendants testified that the deputies coerced them into going to the Sheriff's Office by their conduct and their alleged false promises. Their testimony conflicts with the testimony given by Deputies Porritt and Hollebeke. The deputies testified that they asked defendants if they would accompany them to the Sheriff's Office to which defendants answered affirmatively.

In a suppression hearing, the judge acts as the factfinder and as such, he is the sole arbiter of the witnesses' credibility. State v. Ballenberger, 652 P.2d 927, 929 (Utah 1982). Therefore, Judge Davidson properly exercised his discretion in deciding to deny the defendants' motion to suppress

given his findings that the officers were thrust into a dangerous family dispute, invited into the home and took the reasonable course of settling the dispute in a safer environment at the station and transported defendants without handcuffing them or stating that they were under arrest (S.H. 58-61).

A substantial personal intrusion need not be formally named an "arrest" as defined by state law for Fourth Amendment purposes. Dunaway v. New York, 442 U.S. 200, (1979). However, the mere submission to authority is insufficient to constitute an arrest. See State v. Ransom, 309 N.W.2d 156 (Iowa App. 1981). Defendants claim that they went with the deputies because the deputies said, "Let's go." Yet, Charles Gates testified that the deputies never drew their guns, that he was not physically threatened by them and that he was never arrested formally (S.H. 27, 29).

The deputies conduct did not amount to an intrusion within the meaning of Dunaway. In that case, the police tracked down the defendant following a "lead" that implicated him in a crime, and took the defendant involuntarily to the police station, where he was interrogated. In the instant case, Charles Gates called the deputies to his home and together with his wife voluntarily accompanied the deputies to the Sheriff's Office. Once at the Sheriff's Office, Deputy Porritt interrupted Charles Gates to remind him that he could stop talking and walk out any time he wished (T. 70).

Likewise, defendants reliance on Phillips v. State, 492 N.E.2d 10 (Ind. 1986) is unwarranted given the great factual

difference between the two cases. In Phillips like in Dunaway, the police had singled out the defendant as the probable perpetrator of a crime. The police told Phillips that they would arrest him if he didn't go to the station out of his own volition. Id. at 17.

There is no indication in the instant case that the deputies coerced defendants to accompany them in any way. Moreover, Charles Gates requested the deputies' presence in his home, to tell them about a felony and to help quell a family disturbance. The deputies performed no interrogation as in Phillips and Dunaway, but simply listened to defendants' voluntary confession.

Finally, the deputies' decision to take defendants to the Sheriff's Office was reasonable under the circumstances. Defendants constant fighting made any progress in solution of the situation impossible, in addition to the presence of defendants' children and the potentially volatile domestic disturbance.

Therefore, lacking any objective indicia of an arrest such as handcuffs, guns, etc., and lacking any coercive element in the deputies' conduct, defendants failed to meet their burden to show that they were arrested in their home.

Furthermore, even if defendants were arrested in their home, such arrests would have been legal. In Payton v. New York, 445 U.S. 573 (1980), the United States Supreme Court narrowed the court's holding of the case to police "entries into homes made without the consent of any occupant." Id. at 583 (emphasis added). In the instant case, the deputies entered defendants

home not only with their consent but also at Charles Gates' request. Therefore, this case falls outside of the scope of Payton. By the time defendants arrived at the sheriff's office, Charles Gates had confessed to Deputy Porritt and therefore, there was probable cause for their arrest.

POINT II

THE EVIDENCE WAS SUFFICIENT TO PROVE BEYOND A REASONABLE DOUBT THAT DEFENDANTS WERE GUILTY OF BURGLARY.

Given that the State introduced evidence at trial which included testimony of the verbal and written confessions of the defendants to the offense charged, it is hard to imagine where the alleged insufficiency lies. Apparently, in arguing this point, defendants assume that this Court will reverse the trial court's decision and suppress the evidence.

Even if this Court decides to suppress defendants' confession, there was sufficient circumstantial evidence at trial, to find defendants guilty beyond a reasonable doubt. Jeff Henderson, the victim's nephew testified that when he left the house on January 3, the house was in order, but when he returned after the weekend, the house was ransacked.

Defendants testified that they went into Gladys Williams' house on January 4. Although they knew that Gladys Williams was hospitalized and they claimed that the house was already open, defendants never reported the incident to the police. They said they felt uncomfortable about remaining in the house.

Finally, central dispatcher Fawn Minnick testified that Charles Gates told her that he wanted to talk to a deputy about his burglary of an elderly lady's home who either he knew or who lived in his neighborhood. Defendants both knew Mrs. Williams and were her neighbors.

Defendants choose to rely simply upon their testimony at trial to support their claim of insufficient evidence. Nevertheless, the jury apparently chose not to believe their claims of innocence. In any event, defendants admit entering the home and make no claim that the entry was lawful. Consequently, the only issue before the jury was whether defendants intended to commit a theft inside that home. Apparently the jury believed that defendants had truthfully confessed to that intent to the police officers.

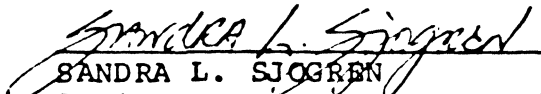
There was evidence before the jury upon which they could determine that defendants committed burglary. As the Supreme Court has stated time and again, where there is any evidence upon which the jury could find defendants guilty, this Court's inquiry must stop and it must affirm the convictions. State v. Underwood, 58 Utah Adv. Rep. 7 (filed May 21, 1987).

CONCLUSION

Based upon the foregoing, the State requests this Court to affirm the trial court's refusal to suppress defendants' confessions and defendants' convictions.

DATED this 4th day of Sept., 1987.

DAVID L. WILKINSON
Attorney General


SANDRA L. SJOGREN
Assistant Attorney General

MAILING CERTIFICATE

I hereby certify that on the 4th day of September, 1987, I caused to be mailed, postage prepaid, four (4) true and exact copies of the above and foregoing Brief of Respondent to

Mark H. Gould
James R. Hasenyager
Marquardt, Hasenyager and Custen
2661 Washington Blvd., Suite 202
Ogden, Utah 84401

